



## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 261**

**[Docket No. R-1556]**

**RIN 7100-AE65**

#### **Rules Regarding Availability of Information**

**AGENCY:** Board of Governors of the Federal Reserve System (“Board”).

**ACTION:** Final rule.

**SUMMARY:** The Board is finalizing its interim final rule amending its regulations for processing requests under the Freedom of Information Act (“FOIA”) pursuant to the FOIA Improvement Act of 2016 (the “Act”). The amendments clarify and update procedures for requesting information from the Board, extend the deadline for administrative appeals, and add information on dispute resolution services. The interim final rule became effective on December 27, 2016. This rulemaking finalizes the interim rule with minor edits.

**DATES:** This final rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

#### **FOR FURTHER INFORMATION CONTACT:**

Katherine Wheatley, Associate General Counsel, (202) 452-3779, or Misty Mirpuri, Counsel, (202) 452-2597, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, D.C. 20551. Users

of telecommunications device for the hearing impaired, please call (202) 263-4869.

## **SUPPLEMENTARY INFORMATION**

### **I. Overview of Final Rule**

On December 27, 2016, the Board published an interim final rule<sup>1</sup> amending its existing Rules found at 12 CFR part 261, in order to comply with the statutory changes required by the FOIA Improvement Act of 2016 (“Improvement Act”).<sup>2</sup> Amendments to the Rules adopted statutory exemptions and exceptions as required by the Improvement Act. The interim final rule became effective on December 27, 2016, and the Board accepted comments through February 27, 2017. The Board is finalizing the interim rule with minor changes to paragraph 261.13(i)(4) in response to a public comment.

### **II. Summary of Public Comments and Final Rule**

Interested persons were afforded the opportunity to participate in the rulemaking process through submission of written comments on the interim final rule during the open comment period. The Board is adopting a minor revision to the interim final rule in response to a comment from the Office of

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<sup>1</sup> 81 FR 94932 (Dec. 27, 2016).

<sup>2</sup> Pub. L. 114–185, 130 Stat. 538 (enacted June 30, 2016).

Government Information Services within the National Archives and Records Administration (“OGIS”).<sup>3</sup>

OGIS asked the Board to revise section 261.13(i)(4) of the Rules to require that a determination letter on an appeal inform appellants of the availability of OGIS’s dispute resolution services. Although not required by the FOIA statute, this change is consistent with guidance issued by the Department of Justice’s Office of Information Policy. Accordingly, the Board has determined to edit the language in paragraph (i)(4) of section 261.13 to notify an appealing party of the availability of OGIS’s dispute resolution services as a nonexclusive alternative to litigation.

The Board has determined not to adopt two other suggestions by OGIS. OGIS’s proposed amendment would add a statement that “[d]ispute resolution is a voluntary process.” This sentence appears to be unnecessary and repetitive given that the Board is already advising appellants that dispute resolution services are available as a “nonexclusive alternative to litigation.” OGIS also proposed language stating that the Board will “actively engage as

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<sup>3</sup> The Board received a second comment requesting that it amend the rule in a manner unrelated to the amendments required by the Improvement Act. While the Board intends to make more extensive amendments to its FOIA Rule at a later time, the interim final rule only addressed the matters required by the Improvement Act, and further changes to the Rule will be preceded by a request for public comment.

a partner to the process in an attempt to resolve the dispute” if the Board participates in the OGIS dispute resolution process. Although active engagement in attempting to resolve a FOIA dispute is of course not unreasonable, the proposed sentence could create additional legal obligations not required under the FOIA. Accordingly, aside from adding in language regarding the availability of OGIS’s dispute resolution services as a nonexclusive alternative to litigation, the Board is adopting section 261.13(i)(4) in the final rule without any further change.

### **III. Regulatory Requirements**

As the Board noted in its interim rule, Congress required that the substantive changes to the Board’s Rules under the Improvement Act become effective by December 27, 2016, and the other amendments to the Board’s Rules were technical in nature. Thus, the Board determined that the prior notice and comment requirements of the Administrative Procedure Act, 5 U.S.C. 553(b), did not apply to the rule. Because no notice of proposed rulemaking is required, these regulations are not a “rule” as defined by the Regulatory Flexibility Act, 5 U.S.C. 601(2), and no initial or final regulatory flexibility analysis is required.

## List of Subjects in 12 CFR Part 261

Administrative practice and procedure, Confidential business information, Freedom of information, Reporting and recordkeeping requirements

### Authority and Issuance

For the reasons stated above, the Board of Governors of the Federal Reserve System adopts the interim final rule published on December 27, 2016, at 81 FR 94932, as final with the following change:

## PART 261 — RULES REGARDING AVAILABILITY OF INFORMATION

1. The authority citation for part 261 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.*, 611 *et seq.*, 1442, 1467a, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.*, 2601, 2801 *et seq.*, 2901 *et seq.*, 3101 *et seq.*, 3401 *et seq.*; 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.*; 42 U.S.C. 3601; 44 U.S.C. 3510.

2. In § 261.13 paragraph (i)(4) is revised to read as follows:

### § 261.13 Processing requests.

\* \* \* \* \*

(i) \* \* \*

(4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office. If an adverse determination is upheld on appeal, in whole or in part, the determination letter shall notify the appealing party of the right to seek judicial review and of the availability of dispute resolution services from the Office of Government Information Services as a nonexclusive alternative to litigation.

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**By order of the Board of Governors of the Federal Reserve System, October 19, 2017.**

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Ann E Misback,  
Secretary of the Board.

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